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## 9 || Attorneys for Defendants

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CHRISTOPHER WAGNER, an individual,

No. 13-cv-04952-WHA

**Plaintiff.**

v.

DIGITAL PUBLISHING  
CORPORATION, a Delaware corporation,  
et al.

**NOTICE OF SUPPLEMENTAL  
AUTHORITY IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
(DKT. 13)**

The Honorable William A. Alsup  
Hearing Date: March 6, 2014  
Time: 8:00 a.m.  
Location: Courtroom 8 - 19th Floor

### Defendants.

22 Defendants respectfully submit that the following supplemental authority, copies  
23 of which are attached, should be considered in connection with Defendants' response in  
24 opposition to Plaintiff's motion for partial summary judgment:

25           1.       *XL Marketing Corp. et al. v. Kirby*, No. 4:11-cv-05107 (N.D. Cal. Jan. 15,  
26 2014) (Hamilton, J.): Attorneys for Plaintiff Christopher Wagner filed a near word-for-  
27 word copy of the pending motion for partial summary judgment (Dkt. 13) in another  
28 matter involving identical legal issues. *See* Declaration of Leeor Neta, dated February 7,

1 2014, ¶ 2. The Honorable Phyllis J. Hamilton of this Court denied the near-identical  
2 motion for the same reasons offered by the Defendants in this matter. Specifically, the  
3 court found that the near-identical motion sought an “advisory opinion”, i.e., “a ruling  
4 regarding the scope of federal CAN-SPAM preemption in the abstract, and presents no  
5 actual facts[.]” A true and correct copy of the order denying the near-identical motion is  
6 attached hereto as **Exhibit A**.

7       2. During the hearing, Judge Hamilton stated emphatically: "There's no way  
8 I'm going to give you an advisory opinion on the preemption issue." The Court also  
9 stated, "Mr. Balsam, I'm totally perplexed as to what we're doing here and why you  
10 really are seeking an advisory opinion from the Court." A true and correct copy of the  
11 transcript of these proceedings is attached hereto as **Exhibit B**.

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13 ||| Respectfully submitted February 10, 2014.

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## NEWMAN DU WORS LLP

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Attorneys for Defendants  
Spire Vision LLC, Digital Publishing Corporation, Juniper Marketing LLC, Mediactivate LLC, On Demand Research LLC, Prime Advertisers LLC, Serve Clicks LLC, Spire Vision Holdings Inc., Ward Media Inc., XL Marketing Corp., Achieve Opportunities LLC , Agreewizard LLC, Furturesdrive LLC, Junctionlights LLC, Opportunity Central LLC, Paths Direct LLC, Pullsmart LLC, and Youradshere LLC